

## WAGANAKISING ODAWAK STATUTE 2006-020

### PROBATE CODE

#### SECTION I. PURPOSE

The purpose of this Statute is to provide for the distribution of estates upon the death of Tribal citizens and others within the jurisdiction of the Little Traverse Bay Bands of Odawa Indians ("LTBB").

#### SECTION II. JURISDICTION

Upon the death of a Tribal citizen, or of any person domiciled within the LTBB reservation, the Tribal Court has jurisdiction to determine the heirs of the decedent, the claims of creditors, and the distribution of property under this Statute. The Court's jurisdiction in probate matters shall cover all of the decedent's real and personal property, including that which is located outside of the Reservation, and any debts owed to the decedent.

#### SECTION III. COVERAGE OF THIS STATUTE

The provisions of this Statute shall be used to distribute the assets of any person domiciled on the Reservation owning assets valued at more than \$15,000.00 (fifteen thousand dollars). In the event a person domiciled on the Reservation dies owning \$15,000.00 (fifteen thousand dollars) or less in assets the Court shall not have jurisdiction to probate the estate.

#### SECTION IV. DEFINITIONS

For purposes of this Statute, the terms below are defined as follows:

- A. Beneficiary: A beneficiary is a person who is designated to receive something from a legal arrangement or instrument, for example, property designated pursuant to a decedent's valid will, income from a trust, or the proceeds from an insurance policy.
- B. Decedent: A decedent is a deceased person with interests to be determined as demonstrated within this Statute.

- C. Heir: An heir is a person who is entitled under this Statute, based upon a family relationship to the decedent, to receive the property of a decedent who dies without a will.
- D. Holographic Will: A holographic will is one that is written entirely by the decedent that is not witnessed or otherwise does not fully comply with the requirements for a will under this Statute.
- E. Immediate Family: The immediate family is generally comprised of the surviving spouse, parents, grandparents, son(s), daughter(s), brother(s) and sister(s) of the decedent.
- F. Legally Incompetent: A person is legally incompetent when a court has determined that the person is mentally or physically unable or unfit to comprehend the nature and consequences of legal proceedings.
- G. Minor: A minor is a person who has not reached age eighteen (18).
- H. Marriage: The legal union of a man and a woman as husband and wife, generally pursuant to a Tribal or state license, and made official by a formal ceremony.
- I. Probate: Probate is the legal process by which applicable Tribal common and written law, state law, or federal law that affects the distribution of the decedent's estate is applied to determine the decedent's heirs, approve wills and beneficiaries, and transfer any personal or real property held in trust by a trustee for a decedent to the heirs, beneficiaries, or other persons or entities entitled by law.
- J. Real Property: Real property includes all improvements and fixtures upon land; that which is incidental and appurtenant to land; all rights, interests, privileges, easements, and encumbrances relating to land, including tenancies and liens of judgment, mortgage, or otherwise; and any portion of these, except that such term shall never include subsurface rights or the title or ownership interest in tribal, trust, or otherwise restricted land.
- K. Testator: A person who has written a will.

## SECTION V. LIMITED JURISDICTION OVER TRANSFERS INVOLVING REAL PROPERTY

The Court may effectuate transfers of land assignments or permanent structures affixed to the land, in accordance with codified Tribal Property and Housing law.

Once the transfer is complete, the Court shall forward a copy of the "transfer" to the Executive Branch for record-keeping purposes. The Court may only effectuate transfer title of real property if the decedent owned the property in fee, with no tribal or federal ownership interests or restrictions.

## SECTION VI. PETITION FOR ADMINISTRATION OF ESTATE OR FOR PROBATE OF WILL

- A. Filing. The surviving spouse, or if none, any family member of the decedent, the personal representative as designated in decedent will, or a creditor of the decedent may file a probate petition. In the case of an unmarried minor, a legal guardian, or person appointed by the Court if a ward of the Court, may file the petition.
- B. Time for Filing. The petition should normally be filed within sixty (60) days of the death of decedent.
- C. Form of Filing. The petition shall contain the following information:
  - 1. The date and location of death of decedent and age of decedent at time of death;
  - 2. A statement of the decedent's tribal affiliation, if any;
  - 3. The name of the person filing the petition, tribal enrollment number, if any, age, residence, and relationship to the decedent;
  - 4. A statement that the decedent left no will, or that the will is filed with the petition and offered for probate;
  - 5. The names, ages, and relationship to the decedent of all known heirs of decedent, and if decedent dies with a will, the names, ages, and relationship, if any, of all beneficiaries under the will;
  - 6. A detailed statement of assets and approximate value of each;
  - 7. A list of names and addresses of the decedent's creditors, including all possible creditors that the petitioner can reasonably determine by reviewing the decedent's financial records and papers; and
  - 8. A general list of items that were buried/burned with decedent not to be distributed.
- D. Minor or Legally Incompetent Heirs. Upon the filing of the petition for administration, the Court shall ascertain whether or not there are any heirs, legatees, or devisees under the age of eighteen (18) years or legally incompetent heirs. If so, the Court shall appoint

a guardian ad litem to represent the minor or legally incompetent heir's interests until the determination of distribution of belongings is final. The Court will give careful attention to all actions concerning that of a minor individual under eighteen (18) years of age or a legally incompetent heir.

## SECTION VII. APPROVAL OF WILLS

- A. When any member of the LTBB Community dies, the Tribal Court shall at the request of any interested party determine the validity of the will after giving notice and full opportunity to appear in Court to tell all persons who might be beneficiaries of the decedent. The Court shall provide actual notice of the proceedings to each beneficiary designated in decedent's will. In the event of a will contest, the Court shall try the case according to rules and procedures relating to civil cases in the LTBB Tribal Court. Normally challenges to a will should not be accepted after a final probate order is issued.
- B. Formal Will. A will shall be deemed valid if (1) the decedent had a sane mind and understood what s/he was doing when s/he made the will, (2) the decedent was not subject to any undue influence of any kind from any person, and (3) if the will was made in writing and signed by the decedent and one (1) witness. The witness cannot be a beneficiary under the will or have a significant interest in the outcome of the will. If the Court determines the will to be validly executed, it shall issue a final probate order, stating that the property described in the will be given to the persons named in the will or, in the event that a person named in the will predeceases the testator, to their heirs of that person in accordance with this Statute.
- C. Holographic Wills. The Court has discretion to determine the validity of a decedent's holographic will. The Court may consider evidence including, but not limited to, affidavits or testimony verifying that the will was hand-written by the decedent and that the decedent was not subject to duress when writing the will. If the Court determines that the holographic will is valid, it shall issue a final probate order, stating that the property described in the will be given to the persons named in the will or, in the event that a person named in the will predeceases the testator, to their heirs of that person in accordance with this Statute.
- D. Invalid Will; Property Not Accounted for in Decedent's Will. Where the Court finds that the decedent's will is invalid, the Court shall order the administration of decedent's estate as if the decedent had died without a will. Where the Court finds that there is property of the decedent that was left out of a valid will and no other lawful instrument designates a beneficiary, the Court shall order distribution of the undesignated property, by following the procedures under this Statute where the decedent dies without a will.

- E. Beneficiary Criminally Responsible for the Death of the Decedent. Any beneficiary or any heir of the decedent found to be criminally responsible for the death of the decedent shall not be entitled to inherit or receive any interest of the decedent's estate.

## SECTION VIII. ADMINISTRATION OF ESTATE WHERE DECEDENT HAS NO WILL

Administration of a decedent's property commences by filing a petition for administration with the Tribal Court. Once the probate petition is filed, pursuant to Section VI of this Statute, the Tribal Court shall order distribution of the decedent's assets remaining after satisfaction of the debts and expenses of the estate as follows in the event it determines that no valid will exists:

- A. If a spouse survives decedent, all assets shall be distributed to the surviving spouse;
- B. If there is no surviving spouse, all assets shall be distributed equally to decedent's surviving children;
- C. If there is no surviving spouse or children, all assets shall be distributed to decedent's surviving parent/s;
- D. If there is no surviving spouse, children or parents, all assets shall be distributed equally among decedent's grand-children;
- E. If there are no surviving persons listed in A-D, all assets shall be distributed equally among decedent's surviving sibling/s;
- F. If there are no surviving persons listed in A-E, all assets shall be distributed equally to decedent's surviving first cousin/s;
- G. If there are no surviving persons listed in A-F, any real property in the Reservation shall escheat to LTBB; any other assets shall be distributed as the Court deems equitable to close friends or caretakers of the decedent.

## SECTION IX. DETERMINATION OF HEIRS AND DISTRIBUTION OF PROPERTY

- A. In the case of a decedent without a will, the Court will make such inquiries of the petitioner, family members, the Enrollment Office or other sources as it deems necessary to make sure the list of heirs is submitted with the petition is complete.

- B. In the case of multiple heirs and mixed financial, personal property and or real property assets, the Court shall hold hearings as it deems necessary to determine equitable distribution. Provided, a distribution plan submitted jointly by all affected heirs shall be presumed equitable.

#### SECTION X. NOTICE TO CREDITORS

- A. Once the Court receives the list of creditors in the Probate petition, the Court shall mail notice to each creditor listed that probate proceedings have commenced for the possessions of the decedent. Proof of mailing shall be filed in the case record.
- B. For creditors who may be unknown or are not reasonably ascertainable, the Court shall issue a notice to creditors by publication. The notice shall be published on the Tribal website, in a Tribal newspaper and in one other local newspaper of general circulation for two consecutive publication dates and proof of publication shall be filed in the case record.
- C. The last date for creditors to file claims against the estate shall be forty--five (45) days from receipt of notice or from the second date of publication, and are thereafter barred from any claim.
- D. Claims shall have the following order of priority:
  - 1. Court costs for actual notice and publication for creditor's claims, and actual notice and publication for determining heirs;
  - 2. Debts owing for expenses of decedent's last illness and subsequent funeral charges not covered by LTBB;
  - 3. Claims of indebtedness to the Little Traverse Bay Bands of Odawa Indians;
  - 4. Debts owing to members of the Little Traverse Bay Bands of Odawa Indians;
  - 5. Claims of all other creditors.

#### SECTION XI. PAYMENT OF CREDITOR'S CLAIMS

- A. All tangible personal property of the decedent that is of a unique keepsake nature, such as art, family heirlooms and photographs, is exempt from sale to pay for claims of creditors. The Court shall not order sale of such tangible personal property of the decedent to satisfy any liens or judgments of creditors.
- B. Decedent's remaining Per Capita funds are subject to satisfaction of liens or judgments of creditors.

## SECTION XII. FORM OF PROBATE PLEADINGS

The Tribal Court shall determine what documents must be filed in a probate case.

## SECTION XIII. SEVERABILITY

If any section or provision of this Statute, or amendment made by this Statute, is found invalid, the remaining sections or provisions of this Statute and amendments made by this Statute shall continue in full force and effect.

## SECTION XIV. EFFECTIVE DATE

Effective upon the signature of the Executive, or 30 days from submission to the Executive branch, or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

## CERTIFICATION

As the Legislative Leader and Tribal Council Secretary, we certify that this Statute was duly passed by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on October 22, 2006 at which a quorum was present, by a vote of 8 in favor, 0 opposed, 0 abstentions, 1 absent as recorded by this roll call:

	In Favor	Opposed	Abstained	Absent
Regina Gasco Bentley	<u>X</u>	<u>          </u>	<u>          </u>	<u>          </u>
Fred Harrington, Jr.	<u>X</u>	<u>          </u>	<u>          </u>	<u>          </u>
Dexter McNamara	<u>X</u>	<u>          </u>	<u>          </u>	<u>          </u>
Mary Roberts	<u>X</u>	<u>          </u>	<u>          </u>	<u>          </u>
Rita Shananaquet	<u>X</u>	<u>          </u>	<u>          </u>	<u>          </u>
Alice Yellowbank	<u>X</u>	<u>          </u>	<u>          </u>	<u>          </u>
Shirley Oldman	<u>          </u>	<u>          </u>	<u>          </u>	<u>X</u>
Melvin L. Kiogima	<u>X</u>	<u>          </u>	<u>          </u>	<u>          </u>
Beatrice A. Law	<u>X</u>	<u>          </u>	<u>          </u>	<u>          </u>

Date: \_\_\_\_\_

Beatrice A. Law, Legislative Leader

Date: \_\_\_\_\_

Melvin L. Kiogima, Secretary

Received by the Executive Office on \_\_\_\_\_ by \_\_\_\_\_

Pursuant to Article VII, Section D, Subsection 1 of the Little Traverse Bay Bands of Odawa Indians Constitution adopted on February 1, 2005 the Executive concurs in this action of the Tribal Council.

Date: \_\_\_\_\_

Frank Ettawageshik, Tribal Chairperson